

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re MACIE M. et al., Persons Coming
Under the Juvenile Court Law.

MENDOCINO HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.M.,

Defendant and Appellant.

A140337

(Mendocino County Super. Ct.
Nos. SCUK-JVSQ-12-6574,
SCUK-JVSQ-12-16575,
SCUK-JVSQ 12-16576,
SCUK-JVSQ-12-16577)

Appellant S.M. is the mother of four children who were detained after respondent Mendocino Health and Human Services Agency (Agency) filed a Welfare and Institutions Code section 300¹ petition alleging that S.M. and the children's father, D.M., had substance abuse and mental health issues and were involved in a violent relationship, all of which was harming the children. S.M. received 12 months of services to help her reunify with her children. At the 12-month review hearing, however, the juvenile court ordered services terminated, unable to find that there was a substantial likelihood of reunification by the 18-month mark, a finding necessary for continued reunification services.

¹ All subsequent statutory references are to the Welfare and Institutions Code.

S.M. appeals from the order terminating services. We conclude the juvenile court's findings were supported by substantial evidence, and we affirm.

BACKGROUND²

The Referral

In the summer of 2012, S.M. was living in Ukiah with her four children, Rachel (13), Rebecca (12), Michael (11), and Macie (9). S.M. and the children's father, D.M., were in the process of divorcing. The family was well known to the Agency, which had received 23 prior referrals concerning the family. While S.M. had no criminal record, D.M. had at least seven arrests, many of which were for inflicting injury on S.M.

On July 19, 2012, the Agency received a referral alleging that Michael was having suicidal ideations and there was ongoing domestic violence in the home. A social worker from the Agency arranged a meeting with the family, first interviewing the parents alone. Based on S.M.'s behavior and speech, the social worker suspected she was under the influence of a stimulant. When questioned about recent drug use, S.M. denied using since May 2012, while D.M. ultimately admitted methamphetamine use two days earlier. Both parents refused to drug test.

The social worker then spoke with Michael. He told her his parents fought "all the time" and he had suicidal thoughts due to their violent relationship. He did not want to go home because he was afraid of his parents and he did not feel safe there.

S.M. was arrested for being under the influence of a controlled substance. Michael was detained and placed in a foster home, while his three siblings remained at home.

The Petition and Detention

On August 10, the Agency filed a section 300 petition alleging that the children came within the jurisdiction of the juvenile court due to the parents' failure to protect them (§ 300, subd. (b)) and because the parents' conduct was causing serious emotional

² This appeal was brought only on behalf of S.M. Facts pertaining to D.M. are thus omitted except where relevant to the issues before us.

damage (§ 300, subd. (c)). The parents did not contest detention, and the court ordered all four children detained. The children were subsequently placed in foster care.³

Jurisdiction

In an August 31 jurisdictional report, the Agency advised that it had referred D.M. to Intake Support and a program for substance abuse treatment, and that he was working to obtain mental health services. As to S.M., the Agency would be referring her to Intake Support and the Alcohol and Other Drug Program (AODP).

The Agency filed an addendum advising that S.M. tested positive for methamphetamines on August 8 and September 10, refused two additional tests, and failed to engage in AODP services. D.M. tested positive for methamphetamine on September 6 and had not engaged in substance abuse services.

A jurisdictional hearing was held on September 26. The parents submitted on the Agency's reports, and the court found true the allegations that both parents failed to protect their children due to their substance abuse issues and that Michael had suffered serious emotional damage as a result of the parents' conduct.

Disposition

On October 31, the Agency filed a disposition report recommending the parents be provided with reunification services. It noted that S.M. was participating in Intake Support, AODP, and Alcoholics Anonymous, and had engaged in services at Project Sanctuary. S.M. had two negative drug tests in October, and had been found suitable for Family Dependency Drug Court (FDDC). The social worker had also referred S.M. for a mental health and medication assessment after she suffered a breakdown earlier that month.

The Agency recommended the following reunification services for S.M.: FDDC, a drug treatment program, mental health and domestic violence services, housing

³ D.M. is an enrolled member of the Cherokee tribe, and the Cherokee Nation intervened in the proceeding. This appeal does not raise any issues pertaining to the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.), and we thus omit any further details on that issue.

assistance, and parenting classes. The proposed case plan established the following objectives: maintain her relationship with her children by adhering to the visitation plan; stay free from illegal drugs, demonstrate an ability to live free from drug dependency, and comply with all required drug tests; obtain and maintain a stable and suitable residence for herself and the children; consistently, appropriately, and adequately parent her children; comply with medical or psychological treatment, including participating in a psychiatric medication assessment and counseling; and develop and follow a domestic violence relapse prevention plan, including completing a domestic violence treatment program.

At the disposition hearing on November 6, the court declared the children dependents of the juvenile court, ordered reunification services for both parents, and referred S.M. to FDDC.

Six-Month Review

On April 9, 2013, the Agency submitted a six-month status report informing the court of S.M.'s progress since disposition, as follows:

In February, S.M. had completed a 90-day residential treatment program at Turning Point. Upon her release, she lived in her car for two weeks and then moved into a homeless shelter, which she was later asked to leave because she missed a required drug test. After she left the shelter, she apparently stayed with a man she met in the treatment program and to whom she was purportedly engaged. S.M. discussed this man with her children, although he had not been screened by the Agency. S.M. had not kept the social worker informed of her current living arrangements.

Following disposition, S.M. initially participated in FDDC as ordered. In January, however, S.M. told the social worker she wanted to reside in Santa Rosa. She was informed this would render her ineligible for FDDC, which was a Mendocino County program. Nevertheless, after S.M. completed her treatment program in Santa Rosa, she informed the social worker she had relocated to Santa Rosa and was living in a homeless shelter, attending aftercare meetings at her treatment program, and dating a man she met in the program.

On March 12, the Agency filed a request to have S.M. exited from FDDC because she had moved out of county and was not showing up for her scheduled FDDC appearances. Two days later, however, it withdrew its request because S.M. had reengaged in AODP services and was readmitted to FDDC.

S.M. received monthly visitation with her children while at Turning Point. After she completed the program, she had one supervised visit. Throughout March, the social worker made multiple attempts to schedule additional visits, but without success. S.M. then appeared at Rachel's high school orientation without warning and engaged in disruptive behavior that was embarrassing and upsetting for Rachel. S.M. had one supervised visit with Michael in early April. Despite these issues with visitation, S.M. had made progress on the requirement that she appropriately and adequately parent her children, having attended numerous Intake Support groups.

S.M. had been taking a number of psychiatric medications under a doctor's care. Because she had exhibited emotional outbursts, however, there remained questions about her mental health needs. By way of specifics, the Agency described the following behavior: "She has engaged in threats against the workers, including filing lawsuits and using the Cherokee Nation to threaten legal action against Child Protective Services (CPS). [S.M.] engages in verbal intimidation and tries to manipulate the social workers by threatening to file complaints with Agency management. . . ." S.M.'s case plan called for a psychological assessment, but that had not yet occurred.

The Agency recommended continued reunification services for S.M., appending an updated case plan that maintained S.M.'s previous service objectives but also added a new one requiring that she "not behave in a manner that is verbally, emotionally, physically, or sexually abusive or threatening." This included completing a domestic violence/anger management treatment project and engaging in appropriate counseling or family therapy.

At the April 18, six-month review hearing, the court ordered continued reunification services for both parents.

The Agency's Section 388 Petition

On April 29, Michael suffered a serious medical crisis when he developed a potentially life threatening abscess in his leg. He was hospitalized for one week, during which time D.M. stayed by his side and participated in his medical care. At the Agency's request, upon Michael's release, the court ordered an extended visit with D.M. so he could continue with Michael's care.

On May 30, the Agency filed a section 388 petition, seeking placement of Michael with D.M. under family maintenance. The Agency noted that since his release from the hospital, Michael had been receiving excellent medical care from his father. The court granted the motion and ordered Michael returned to D.M.'s custody under a family maintenance plan.

The Agency Suspends S.M.'s Visits

On August 8, the Agency suspended S.M.'s visits, believing she engaged in behavior during the visits that was detrimental to the children. S.M. moved for an order compelling the Agency to reinstate her visits. Following a hearing, the court reinstated visitation.

On August 12, the Agency filed an interim review report advising that at the 12-month review it would be recommending that Rachel, Rebecca, and Macie also be returned to D.M.'s care under a family maintenance plan.

12-Month Review

On September 10, the Agency filed a 12-month status report recommending termination of reunification services for S.M. The Agency reported as follows:

S.M. had not yet obtained stable and suitable housing for herself and her children. At the time, she was sleeping on a friend's couch. She had informed the social worker and the children that she planned to move in with her boyfriend in Santa Rosa and was on the housing lists in Sonoma County. S.M.'s boyfriend had a criminal record that included having sex with a minor under 16 years old, he was not allowed contact with his own child, and he was not approved for contact with S.M.'s children. As such, S.M. would be unable to both provide a home for her children and live with her boyfriend.

S.M. had made progress on the requirement that she remain clean and sober. She had completed the Turning Point residential treatment program and claimed October 10, 2012 as her clean date. She had struggled somewhat the requirements of FDDC, receiving 12 sanctions, but she finally advanced to Phases 2 and 3 and had not received any sanctions since then.

In April 2013, S.M. completed a psychological assessment with clinical and forensic psychologist Jacqueline Singer. Singer described S.M. as “insightful regarding her own process,” but observed that she “seemed to minimize her behaviors as they related to inappropriate contact or conversations with the children and her relationship with her boyfriend.” Further according to Singer, while S.M. “did appear capable of reflecting on her own behavior at times, [she] focused primarily on her concern for her children and [the Agency’s] inability to understand the children’s needs.” Singer noted that when presented with emotionally complex situations, S.M. was likely to be reactive, rather than having a more considered response. And while she demonstrated “considerable psychological resources,” she was unable to use these resources in an effective manner when overwhelmed.

Singer concluded with the following assessment: “I do believe that[S.M.] can benefit from services, but individual therapy needs to be added to her current services. She needs to be able to utilize her capacity for insight to understand the difference between support and distraction in her relationship with her current boyfriend and the ways in which she is using this relationship to prove herself to her children as well as bolster her own sense of self-worth. At this time she does not seem to understand how she is repeating a pattern of putting a relationship ahead of her children and her own recovery. Her behavior in this regard is self-destructive. She needs to be confronted about this in her therapy so that she can understand her actions and consider their impact on her stated goal of reunification and being a good parent. She should also be helped to be more mindful of her emotional reaction to events that make her feel useless or attacked and develop techniques to monitor her own reaction and cope with this kind of stress without lashing out at others.”

In May 2013, S.M. began participating in individual therapy with Judy Albert of Project Sanctuary. In Albert's report (dated August 20, 2013), she related that in their early sessions, S.M. presented as "quite angry and upset," with most of her anger directed at the Agency over whether it was meeting her children's needs. By the end of June, however, Albert "began to observe a marked difference in [S.M.] She stopped complaining about the services she was required to take and started bringing to her therapy sessions insights about her own behaviors. [S.M.] can be very insightful and she started trying to soften her reactivity to the Social Worker. She began to acknowledge her need to control situations and that her reactivity was not appropriate nor was it serving her cause. We were able to pinpoint that [S.M.'s] outbursts were frequently caused by her not feeling 'good enough.' "

Albert described S.M. as now "focused on her ongoing recovery and supporting herself by getting a good job." According to Albert, "[S.M.] comes to her sessions ready to work and look at behaviors which are blocking her progress."

In mid-May, S.M. and the children began family therapy with Andy Mattern at Redwood Children's Services. According to a September 2 telephone update, Mattern was unsure the children were benefitting from the therapy sessions, as S.M. often focused on her own needs during therapy. He was also concerned that S.M. was using drugs again as "she [did] not appear as the [S.M.] I used to know when she was clean." He did report that towards the end of June, "just for a minute, she was the old [S.M.]"

S.M. was also participating in a Family Empowerment Group, having attended 16 sessions. In an August 14, 2013, Family Empowerment Group progress report, the facilitator stated: "[S.M.] presents as angry, frustrated, and mistrustful of the Child Welfare System. She often utilizes the Family Empowerment Group to express her concerns regarding the 'damage' she believes [the Agency] is doing to herself and her children. Our attempts to 'explore' or 'consider different approaches' to [S.M.'s] concerns have not proven productive. Her issues and conflicts with [the Agency] appear to have grown more intractable as her case has progressed. [¶] She presents as remorseful about this Child Welfare System intervention and the damage to her family.

She takes responsibility for her addiction and the role it played in her case. She speaks lovingly of her children and enjoys sharing stories and interactions she has with her children.” The report concluded that “[S.M.] does not appear to have gained insight, skills, or adequate support from this Family Empowerment Group. She consistently expresses her issues and ‘argues her point.’ She clearly feels ‘victimized’ by the system and it seems to have worsened as of submission of this report.”

The Agency’s report also detailed problems that occurred either during visits or at the Agency between April 1, 2013 and August 7, 2013, problems that had prompted the suspension of visitation. The examples included: S.M.’s verbal abuse of the social worker after Michael left a visit (April 2013); S.M. confided in her daughters that she was engaged, told them to keep that a secret from their foster parents and the Agency, and showed them her boyfriend’s picture on Facebook via her cell phone, all in violation of the visitation rules (April 2013); S.M. left a meeting with the social worker very upset (April 2013); S.M. stated, “What the f—k is he doing out of his f—ing car” in front of the children when she saw D.M. outside the visitation center (June 5); S.M. made a comment critical of D.M.’s parenting in front of Rachel (June 2013); in the lobby of the Agency, S.M. screamed that the Agency was not taking care of her children when Macie developed a bad case of poison oak (June 2013); S.M. used Michael to pass a note to D.M. (June 2013); S.M. bought Michael a snow cone, which was contrary to his special dietary needs (June 2013); Michael reported that S.M. made him feel uncomfortable by asking him too many prying questions (June 2013); S.M. became very agitated with a social worker during a meeting over visitation and then made salacious comments about D.M.’s girlfriend (July 2013); S.M. rolled her eyes at staff when reminded of Michael’s dietary needs (July 2013); S.M. engaged in conflict with the foster mother and would not listen to her children’s concerns when confronted in family therapy (July 2013); and S.M. obtained the location of their foster home from Macie and Rebecca (July 2013).

An August 7 visit was particularly rife with conflict, after which the social worker suspended visitation, a decision later reversed by the court. At the time of the status report, however, the conflicts continued. The social worker summed up the situation as

follows: “This social worker has made multiple attempts to work with the mother regarding her parenting style. [S.M.’s] comments are always the same, ‘I have raised these children for 14 years, I know how to treat my children and nobody is going to tell me otherwise.’ [S.M.] has refused attempts to refer her to parenting classes [S.M.] has refused to acknowledge any issue with her parenting, including yelling at people to get her children’s needs met. According to her this is proof to her children that she cares, while the children are confused and upset by the mother’s behavior.”

Finally, concerning the ultimate issue of returning the children to S.M.’s custody, the Agency summarized:

“[S.M.] has not been active in completion of case plan services. She has continued to evade this social worker, be verbally abusive or manipulative to get her needs met, often using the children as leverage to meet her own needs. The mother has threatened this social worker with ‘her attorney’ before slamming out of the building. When presented with a new recommendation or an observation by this social worker, she would resort to attacking [D.M.] and his partner, and often asking, ‘Why is he getting more?’ When the social worker would respond that he is making internal changes and is growing as a person, she would respond with ‘Why couldn’t he do that for me?’ ‘Why does she get the new [D.M.]?’ thereby turning the focus to her own needs rather than to becoming a person who can meet her children’s needs.

“[S.M.] continues to demonstrate jealousy over [D.M.’s] success and new partner. She attempts to undermine his relationship with the children by constantly reminding them that he abandoned them and makes disparaging remarks about the father’s character. The mother has not made an effort to allow the children to build trust with the parents, and has told the children she would stop services once they were home with their father. The mother has created confusion and continues to test their loyalty and reward negative behavior as when she stated, ‘You are such a strong girl’ in response to Rachel running away from the home.

“[S.M.] has not accepted the need for [the Agency’s] intervention and has not benefitted from any of the services she has attended. Therefore it is the recommendation

of this social worker to terminate her services, as there is not a substantial probability of reunification should her services be extended to 18 months.”

On September 11, the Agency filed an addendum to its 12-month review report, bringing to the court’s attention a November 1, 2012 arrest of S.M. that had not previously been reported to the court. The accompanying police report described an incident that occurred on November 1, 2012, in which S.M. assaulted D.M. and a female friend in a parking lot, leading to S.M.’s arrest for domestic violence and battery.

On November 6, the Agency filed a second addendum to the 12-month status review, advising that on September 24, S.M. reported to AODP that she was living in Sonoma county. In-county residency was required for FDDC, so S.M. was exited from AODP. It was unknown whether she was attending AODP in Sonoma county.

12-Month Review Hearing

A contested 12-month review hearing was held on November 7 and 8, 2013.⁴ Psychologist Gloria Speicher was the first to testify. An expert in child psychology and family therapy, Speicher was retained by S.M.’s counsel to assess the progress S.M. had made in her case plan and the likelihood of reunification by the 18-month deadline. She did not conduct a psychological evaluation of S.M., but rather reviewed the records and spoke with S.M.’s service providers.

Speicher testified the information she reviewed did not suggest that S.M. was parenting in a negative manner directed at her children. She also saw evidence that S.M. was working to control her negative outbursts with other individuals, including the social worker with whom she had had a volatile relationship.

According to Speicher, S.M.’s individual and family therapists both indicated they had seen “a tremendous amount of progress over time” The family therapist reported that over the years he had worked with S.M. he had seen continued progress in her parenting, her ability to be insightful about her process, and her recognition of what

⁴ The hearing concerned only the Agency’s recommendation to terminate reunification services for S.M. With the children living with him under a family maintenance plan, D.M. was on a different review schedule.

she needed to do in order to be a better parent. S.M.'s individual therapist advised that S.M. was clear about her need for medications, which was often a barrier for individuals who have bipolar disorder.

Speicher also reviewed the Agency's service logs of the visits between S.M. and her children. Many of the examples of conflict described in the logs were, in Speicher's opinion, instances of S.M. being protective of her children. From what Speicher saw in the records and learned in speaking with S.M.'s service providers, she believed S.M. had the ability to meet emotional the needs of her children.

On cross-examination, Speicher acknowledged she had never observed S.M. interact with her children. When given examples of S.M. swearing about or disparaging D.M. in front of the children, Speicher acknowledged those would be instances of negative behavior and of someone losing control, but she believed it was not damaging to the children if those were isolated instances rather than consistent behavior. Speicher acknowledged that the only reports of visits she read were of monitored or supervised visits.

Speicher also acknowledged that, as related in her report, S.M.'s boyfriend had a conviction for a sex offense. She agreed that that would be of concern, but explained that the history of the offense was relevant.

David C., S.M.'s boyfriend, testified next. Admitting he had a conviction for having sex with a minor, he explained that when he was 19 years old he was arrested for having sex with his 16-year-old girlfriend, who is the mother of his children. David had not seen his children for eight years but was working on reunifying with them. He acknowledged a long history of drug abuse dating back to when he was 14 years old. He had just completed a nine-month treatment program at Turning Point, and was participating in various aftercare programs, regularly drug testing, and attending AA or NA meetings.

Judy Albert, the program director at Project Sanctuary, also testified. A licensed therapist and an expert in domestic violence counseling and treatment, she began working with S.M. in May 2013 to help her work through her past domestic violence issues with

D.M. and maintain her mental health stability. Albert authored an August 20, 2013 report in which she represented that by the end of June 2013 she had “observe[d] a marked difference in S.M.” She testified that a lot of parents who come to her through the dependency proceeding—particularly the mothers—feel they are being judged as a bad parent and are very oppositional. S.M. displayed this to a “really elevated” level, being protective of her children and feeling they were not being treated properly in foster care, exhibiting a lot of anger and frustration with the social worker as a result. Part way through her treatment, however, S.M. began to see how her reactivity was detrimental and to focus on the work she needed to do. According to Albert, S.M. had a strong personality and “some really excellent self-reflection skills” that she was using to take ownership of her behavior. S.M. had made “great strides” in controlling her tendency to be reactive in conflicts, and she had shown insight regarding her blowups with the social worker, recognizing they were sabotaging her own situation.

Family therapist Mattern was the next to testify. He had worked with S.M. and the children to help the children express themselves to S.M. and not experience distress about the events that had occurred before and during the dependency proceeding. The children expressed anger toward S.M. at the situation, and at first she was very defensive. In the four months preceding the hearing, however, S.M. was taking responsibility and not blaming other people. The children also expressed embarrassment at how S.M. acted towards others in front of them. While it was hard for her and she wanted to blame others, S.M. eventually took responsibility and realized the children had legitimate concerns. Mattern testified that he had seen improvements in family therapy since the beginning of the summer, and that the children had recently expressed that they would like more visitation with their mother.

Asked about the concerns he had expressed to the social worker on September 2 that S.M. was using drugs again, Mattern explained that at some point during the summer, S.M. had exhibited a lack of focus and clarity. He suspected drug use, but also believed it could have been that her psychotropic medication was not working or that other factors were causing her stress. Mattern was also asked about his statement to the

social worker that “She does not appear as the S.M. I used to know when she was clean,” although towards the end of June, “Just for a minute she was the old [S.M.]” He explained what he meant: “[S.M.’s] a very powerful woman, and she can be very there when she’s there. And I remember her from . . . when I was working with couples before I even became part of Redwood Children Services. There were times when I’d see her there. It’s a person who loves her kids, who has fair values for them and upholds those values, and I believe the connection those kids have with her is based on that old [S.M.], if you would call it that.” Since September 2, there had been, according to Mattern, “some movement” back to the “old [S.M.]”

Mattern was asked whether the fact that S.M. was living with her boyfriend, who the children could not be around, suggested that she was placing more importance on her needs than those of her children. He responded that at that time, the children were not in her care, and S.M. and her boyfriend had discussed the situation, agreeing they would go their separate ways if their relationship ever prevented her from having visitation. He acknowledged it would be concerning, however, if the social worker had already advised S.M. that living with her boyfriend was problematic but that they nevertheless stayed together.

Mattern no longer agreed with his prior assessment that the children were not benefitting from family therapy because S.M. was more focused on her own needs. Rather, he testified, “it seems that [S.M.] is focused on getting back off the street, getting back into a life, staying in her recovery and taking personal responsibility for her behavior. She has said it many times to her kids every time this issue comes up in therapy, ‘I screwed up. I blew it. It was a dumb decision. There was no reason for it.’ ” He believed that unsupervised visits would be appropriate in the future if S.M. continued to made the kind of progress she had been making. When asked if the children would be able to live with her in the future, he responded: “I feel if she keeps on this track, there’s no reason that’s not going to happen, you know. Obviously, the pitfalls are out there, you know, if she returns to drug use or whatever or some poor choices. But . . . at this point it doesn’t look like she’s looking that way.”

Linda Davidson, a crisis counselor and group facilitator at Project Sanctuary, also testified. In June, S.M. began participating in a Women's Empowerment Group and an anger management group that Davidson facilitated. Over the course of the group, Davidson saw "great improvement" in S.M.'s ability to control her temper. Davidson conceded she had not had an occasion to observe S.M. outside the group context.

S.M. was the last to testify. She acknowledged at the outset that her interactions with the social worker had been negative, but she claimed that in late July or early August, she recognized those negative interactions were impacting her case. She engaged in the anger management program at Project Sanctuary, and she felt she had made improvement in controlling her temper with the social worker.

S.M. testified she had been clean since October 10, 2012 and would be graduating from AODP the following week. S.M. planned to continue her drug treatment program in Sonoma County, having already scheduled an in-take appointment for a 90-day outpatient program. She was also attending four to five AA or NA meetings a week and felt "very confident" about her ability to maintain her sobriety. When asked about a printout from AODP indicating she was being discharged from the program because she had relocated to Sonoma County, S.M. did not believe the information was accurate.

S.M. testified that for the past three weeks she had been living at a Petaluma homeless shelter that had programs to help her work towards obtaining permanent housing. She had a case manager with whom she met once a week, and she was required to attend a weekly relapse prevention class. She was also participating in Seeking Safety to continue her domestic violence awareness. She planned to add an emotional awareness class that would allow her to continue to work on her anger management. For the past week, she had been waiting tables at a restaurant in Petaluma and anticipated working 15 to 20 hours a week.

S.M. acknowledged that her boyfriend was also living at the shelter, but she did not have any concerns about his history of drug abuse because he was engaged in the same recovery program as she. She testified that if she were told her children could not be returned to her because she was living with her boyfriend, she would walk away from

him. She had not separated from him yet because nobody had told her their relationship was an obstacle to visitation or reunification.

S.M. also acknowledged that at the beginning of the summer, she had a lot of anger towards D.M. because she had issues with letting go of a 15-year relationship and seeing her ex-husband with another woman. She disagreed with some of the notations in the Agency's service logs about statements she purportedly made about D.M., because she was the one who told the children that even if they were angry with D.M., he was still their father and they could not make disparaging remarks about him.

S.M. denied she had any negative feelings about the fact that the children were living with D.M. under a family maintenance plan. She admitted that she initially did, but claimed it was because she wanted to be in the same place. Now, her bigger concern was her children being in a stable situation. S.M. testified that if she did obtain stable housing in Petaluma, she would still want the children to remain with D.M. in Ukiah because of their schooling, and that she would ask for weekend and possibly summer visits.

S.M. testified that she did not inform the social worker about her progress in the AODP program because she had signed a release of information and assumed the Agency and AODP were communicating. She also claimed she had kept the social worker informed about her living arrangements, testifying that she advised her when she was "couch surfing" and staying with a friend long term. S.M. had not discussed with the social worker the programs she was engaged in in Petaluma because at this point in the dependency proceeding, she "just let [her] attorney . . . bring those things to light in this setting."

Following evidence, the court heard closing arguments, beginning with counsel for S.M. She argued that although S.M. had a slow start, hindered in part by her relationship with the social worker and her anger at the Agency, she had made progress in her services. S.M.'s conflict with the Agency derived from her belief that her children were not being properly taken care of, and she reacted negatively to that belief, a problem she had been addressing. She worked with Judy Albert to recognize her reactivity and

develop strategies to move past it. She had recognized she had an anger management problem and obtained a referral to an anger management program, which she completed. All of her progress was a good indicator that she could complete her services by the 18-month mark and reunify with her children.

Counsel for D.M. argued that D.M. did not support continuing services for S.M., noting that the children would continue to see their mother if reunification services were terminated. Counsel observed that while there was testimony that S.M. began to make progress in July or August, this was almost a year after the proceeding commenced and coincided with the Agency's recommendation that the court terminate services. He was also concerned about S.M.'s boyfriend.

Counsel for the children, on the other hand, supported continued services for S.M. While classifying this as "obviously a tough case," he represented that all of the children wanted their mother to have every chance to reunify. S.M. had consistently visited with the children, and they wanted more time with her. And, he continued, there was "a lot of good stuff" in terms of the progress S.M. had made in resolving the problems that led to the children's removal. As he noted, "[W]e're not going to be handing out parent of the year awards. We're looking for passing grades here. And I think that—that certainly since August there has—appears to be an epiphany on the part of [S.M.]"

As to whether S.M. had demonstrated the capacity and ability to complete the objectives of her treatment plan and provide for the children's safety and well-being, counsel for the children argued there was "a long history of [S.M.] being able to be a good parent" and imparting values to the children. That being said, counsel advised that he would not support their return to their mother's care at the 18-month mark in February under any circumstances if S.M. was still involved with her boyfriend because there was too big a risk of relapse and because he had a history of "sexual indiscretions."

Counsel for the Agency argued that S.M. had not satisfied the criteria for continued services, particularly that she had the ability to provide for the children's safety, protection, physical and emotional well-being, referencing the examples in the Agency's report of instances of S.M. "making inappropriate comments and paving [*sic*]

them in a way that destabilizes the children.” Counsel also argued that S.M. had not adequately dealt with her anger issues, as evidenced by the fact that she was not even communicating with the social worker. She acknowledged that S.M. had “done a lot in her case plan,” but, she submitted, the evidence did not support a finding that she would be capable of effectively parenting her children in three months.

Following argument, the court ordered termination of S.M.’s reunification services, stating it could not find a substantial probability that the children would be returned to S.M.’s care by the 18-month mark. It cited Speicher’s opinion that S.M. “could” reunify by the 18-month mark, while the governing statute requires a substantial probability of reunification. It noted that while “it’s kind of recently that she’s made such good progress, but there was a long time when—when we didn’t. And there’s kind of major resistance to social workers, which is only now breaking down.” The court also referenced the August Family Empowerment Group report, in which the facilitator stated that S.M. did not appear to have gained the necessary insight. Since that time, the court believed, S.M. had gained more insight, but there was still the Agency’s report of “a history of very problematic visits.” It also cited S.M.’s decision to move to Petaluma, where she was living in a homeless shelter and which created issues relating to changing service providers. Lastly, the court was troubled by S.M.’s relationship with her boyfriend given his history of drug abuse. In light of the foregoing, the court could not find that S.M. had demonstrated the capacity and ability to complete the objectives of her treatment plan and provide for her children’s child’s safety, protection, physical or emotional well-being.

This timely appeal followed.

DISCUSSION

At the 12-month review, the juvenile court may order continued reunification services “if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home” within 18 months of the date of removal. (§ 366.21, subd. (g)(1).) In order to make such a finding, the court must find that three criteria have been met: (1) the parent

has consistently and regularly visited the child (*id.*, subd. (g)(1)(A)); (2) the parent has made significant progress in resolving problems that led to the child's removal (*id.*, subd. (g)(1)(B)); and (3) the parent has demonstrated the capacity and ability to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs (*id.*, subd. (g)(1)(C)). As one court stated, "The statute explains if these three factors are present, then there was 'a compelling reason for determining [termination of services] is not in the best interests of the child.' [Citation.] It recognizes a parent who still poses a risk of detriment at the 12-month hearing could with additional time successfully rehabilitate and reunify. Nevertheless, the Legislature has set a very high hurdle for continuing the case beyond 12 months." (*A.H. v. Superior Court* (2010) 182 Cal.App.4th 1050, 1060.)

Here, S.M. challenges the court's finding that there was not a substantial probability the children would be returned to her custody by February 13, 2014, the 18-month mark. While S.M. addresses all three of the section 366.21, subdivision (g)(1) criteria, the court focused primarily on the third one: whether S.M. had demonstrated the capacity and ability to complete the objectives of her treatment plan and provide for her children's safety, protection, physical and emotional well-being, and special needs. As noted, the court found she had not made the necessary showing. On an appeal presenting such a challenge, we review the juvenile court's findings for substantial evidence. We do not reweigh the evidence or exercise our independent judgment. Rather, we review the record in the light most favorable to the court's determinations, and we draw all reasonable inferences from the evidence to support the findings and orders. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688–689.) Applying this standard, we conclude the court's findings were well supported.

The juvenile court's finding on the third criteria was based largely on three concerns, one of which was S.M.'s housing situation. By the time of the 12-month review, S.M. had neither obtained nor demonstrated that she could maintain suitable housing, a problem that certainly speaks poorly about her ability to provide for her children's safety and well-being. Over the course of the dependency proceeding, S.M.

had lived in her car, “couch surfed,” stayed with friends long term, and stayed in shelters. At the time of the 12-month review, despite being more than one year into the dependency proceeding, S.M. was still homeless and living in a shelter. She testified at the hearing that the shelter offered programs to assist her with finding permanent housing, and she was actively participating in those programs. She had only been doing so, however, for the three weeks prior to the hearing. And she never provided this information to the social worker, nor did she offer any independent evidence to substantiate her testimony. Other than S.M.’s self-serving testimony, nothing suggested that she would finally be in stable housing within three months of the hearing.

The court also expressed concern about S.M.’s relationship with her boyfriend, a concern shared by the Agency. He had a conviction for having sex with a minor and a lengthy history of drug abuse dating back to when he was 14 years old. The Agency informed S.M. that her relationship with her boyfriend was problematic and that he was not authorized to be around her children. Despite being advised that she could not both live with him and reunify with her children, S.M. maintained the relationship, continuing to live with him at the time of the 12-month review hearing. As the Agency noted, this suggested that S.M. continued to put her desires before the needs of her children. As to this, S.M. submits “[t]he court was merely engaging in speculation that this relationship would harm S.M.’s ability to reunify.” This myopic argument ignores the evidence that S.M. was told she could not live with her boyfriend and reunify with her children, yet she chose to continue with the relationship. This is not mere speculation.

Perhaps most significant, however, was the court’s concern about S.M.’s “problematic” behavior. One of the primary barriers to reunification was S.M.’s “reactive” personality that caused her to behave explosively and antagonistically, behavior often directed towards the Agency in general and the social worker in particular. The Agency detailed at least 15 examples of S.M.’s outbursts and destructive behavior—including many incidents that occurred front of the children—that eventually prompted the suspension of visits. And there was evidence before the court that these significant behavioral problems persisted. For example, the court specifically cited the August 14,

2013 Family Empowerment Group report, which stated that S.M. still felt “victimized” by the dependency proceeding, was “angry” and “intractable” in her opinions about the Agency, and had not gained “insight” or “skills” to address these problems.

S.M. attempts to refute the court’s conclusion that her reactive personality and explosive manner of parenting was an ongoing problem by directing us to evidence that by July or August, she had finally recognized that her reactivity was destructive, had begun reflecting on her own behavior, and was learning how to control her outbursts. This included testimony from her various service providers, including Albert, Davidson, Mattern, and Speicher, all of whom testified about the progress S.M. had made since the summer. The record does indeed suggest that S.M. appeared to change course in July or August, finally taking the first steps to address behavior that was interfering with reunification. For this, we applaud her. But, we note that this improvement began only a few months before the 12-month hearing. And in its September 10, 12-month review report—a mere two months before the hearing—the Agency reported that the problems arising from S.M.’s refusal to accept assistance with her parenting style persisted.

S.M. objects that the fact “that progress was coming late in the dependency proceedings . . . [was] of no significance” because nothing in section 366.21, subdivision (g)(1)(c) “requires that the qualifications for return be in existence for a fixed period of time.” Be that as it may, the length of time for which a parent has sustained his or her progress is highly significant: certainly it is reasonable to place more confidence in a parent who has sustained progress for six, eight, ten months or longer, than in one who has done so for only three months. Put another way, a parent who has made and maintained progress for a noteworthy period of time, as opposed to one who started to make changes shortly before the review hearing, has more likely “demonstrated the capacity and ability to both complete the objectives of his or her treatment plan and provide for the child’s safety, protection, physical or emotional wellbeing, and special needs.” Here, the Agency received the referral in July 2012 and filed the petition the next month. It was a full year later that S.M. finally acknowledged that her explosive ways were creating a barrier to reunification. And it is not lost on us that she began to make

changes just before the Agency was to submit its 12-month review report, which report recommended termination of services.

S.M. also minimizes her antagonism towards the social worker, claiming “the record hints at an equal animus on the part of the social worker against S.M.” The record in fact contains no such “hints.”

S.M. acknowledges that the FEG report on which the court relied advised that S.M. was resistant to change, did “not appear to have gained insight,” and was angry at the Agency, but she claims that Judy Albert put the report “into context” by testifying that in her many years of working with parents involved with the Agency, not one of them felt the Agency acted fairly. In S.M.’s view, Albert’s testimony completely discredited the FEG report. Not so. The court was at liberty to credit the FEG report over Albert’s opinion, especially in light of the additional evidence suggesting a diminished likelihood of reunification.

In short, there was indeed evidence from S.M.’s various service providers (Albert, Davidson, and Mattern) and her expert (Speicher) that she had made begun to address her anger issues and related behavioral problems. But, as noted, at the 12-month review, the question is not whether the parent is making progress towards reunification, but rather whether there is a “substantial likelihood” of reunification by the 18-month mark—in this case, a mere three months away. The court concluded that despite the evidence regarding S.M.’s recent accomplishments, other evidence established that she had not “demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for [her children’s] safety, protection, physical and emotional well-being, and special needs.” This other evidence, detailed above, was substantial evidence that supported the court’s conclusion.

DISPOSITION

The order terminating reunification services is affirmed.

Richman, J.

We concur:

Kline, P.J.

Stewart, J.